

Washington State Solid Waste Advisory Committee

April 11, 2002

Laurie Mauerman
Washington State Department of Agriculture
Pesticide Management Division
P.O. Box 42560
Olympia, WA 98504-2560

Re: Proposed Rulemaking Regarding Clopyralid Containing Herbicides (RCW 34.05.320)

Dear Ms. Mauerman:

I am writing on behalf of the State Solid Waste Advisory Committee (SWAC) regarding the Draft permanent Rules set forth by your agency regarding the use of pesticides containing clopyralid. This is the second time we have commented to WSDA regarding clopyralid; please see the attached letter to Mr. Weed dated October 31, 2001. Now that the Department is moving towards adopting permanent rules, it is critically important that the concerns of all parties be heard and taken into account before those rules go into effect.

The Draft Rules place few restrictions on where clopyralid can be used, or who can apply it. They do not require tracking of its use, nor labeling of agricultural products containing it upon sale. Nor do they envision follow-up studies to determine the spread and impact of the herbicide, or the evaluation of your Rules to determine their efficacy in dealing with this significant problem. In effect they only restrict clopyralid's use on residential lawns. We believe the Rules will not protect the extensive compost industry in this state. Furthermore, we believe they will have a negative impact on many agricultural interests, by both eliminating a cost-effective waste disposal method and harming markets for farm products.

The threat to the state's compost industry is immediate and proven. One major compost facility in this state has already stopped receiving material because it cannot get rid of the contaminated compost it has already produced. The draft Rules do little to turn the tide, and the wide range of uses of this herbicide allowed therein will broaden the problem. The result will be to greatly restrict the sources of organic material that can be sent to compost sites. Even so, facilities would have to continually test incoming feedstock for clopyralid to protect against contamination. Doubts by consumers about contamination would harm the market for compost. In sum total, we believe the Rules as drafted threaten the very continued existence of this state's compost industry.

During the 2002 Legislative Session, HB 2308 passed both the House and Senate and was signed into law by Governor Locke. It sets a goal of eliminating landfilling of residential and commercial yard debris by 2012. If composting is no longer an option, that goal will not be achievable. Widening use of clopyralid will reduce the legal options for disposal of this part of the waste stream.

Our recommendations are as follow:

We support the ban on residential use of pesticides containing clopyralid.

While this is not adequate on its own, it is an important component of an overall regulation.

Use of clopyralid should be more restricted. Specifically, it should not be allowed for any lawns, turf, or golf courses.

The Rules allow use of clopyralid in much too broad a range of applications, and without adequate controls. In effect, it could be used anywhere except on residential lawns, and could be applied by unlicensed individuals.

The Rules should require tracking and reporting to WSDA of sale and application of all pesticides containing clopyralid. The Departments of Agriculture and Ecology should study and report to the Legislature on the effectiveness of the Rules.

Given the risks identified to date, WSDA and the Department of Ecology should develop tools to study the impact of the Rules and determine whether they are effective. Tracking would be an invaluable tool, yet the Rules do not require any record keeping of who uses clopyralid or where it is applied.

The Rules need to focus on regulation rather than voluntary efforts and labeling.

The present draft assumes that written notices provided to grounds keeping personnel will be adequate to keep clippings out of compost facilities. This is unlikely to work. The warning labels currently placed on clopyralid have proven unreliable. The persistence with which clopyralid remains effective through application, growth, harvesting, and composting -- and the number of people involved in that "chain of custody" -- makes notifications and warnings very problematic. The Draft Rules do not recognize or account for this problem. Nor do we believe that a voluntary approach to educating users will work. The impacts of this substance hit several steps downstream, too far removed from those who use it for effective feedback. Regulations controlling its use are necessary.

The rulemaking effort needs to more comprehensively consider the potential impacts on agriculture. The Rules should restrict the use of clopyralid only to agricultural applications where its use is essential, and where the farm products will not be composted.

To date the Clopyralid debate has to a large extent been characterized as balancing agricultural concerns against those of the compost and solid waste industries. In fact the situation is much more complicated. Many farmers rely on compost products to supplement their soil; others send animal bedding and manures to compost facilities as the most economical form of disposal. As water quality issues force dairy farmers to handle their wastes more carefully, the composting option will become more important. Unrestricted use of clopyralid will restrict if not end those practices, and create an economic impact on those farmers. Such interests need to be heard, and the impact of the rules on them assessed.

The Rules also need to consider the impact on markets for agricultural crops. The overseas markets which are of increasing importance to farmers are highly sensitive to questions of contamination. In particular, compounds with the persistence demonstrated by clopyralid could be very troubling to buyers and officials in other countries. There is no doubt that clopyralid is in many ways a highly effective and efficient tool in pest management. Nor are there claims that it is harmful to humans or animals. However, there is also little doubt that it significantly impacts certain plants, or that its effect persists through the compost process. These features could raise obstacles to marketing efforts for Washington products.

We recognize the difficulty of developing rules which address conflicting needs of various interests. However, we believe that the present Draft

Rules will significantly narrow solid waste management options in this state, and will do too little to protect agricultural interests.

Thank you for the opportunity to submit comments on the Draft Rules.

Sincerely,

Jeff Kelley-Clarke

Jeff Kelley-Clarke, Chair
State SWAC

c: William Brookreson, Acting Director, WSDA
Rep. Kelli Linville, Agriculture & Environment Committee Chair
Rep. Sam Hunt, Agriculture & Environment Committee Co-Chair
Rep. Mark Schoesler, Agriculture & Environment Committee Comm.
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Cliff Weed, WSDA
Bob Arrington, WSDA
Tom Fitzsimmons, WDOE
Cullen Stephenson, WDOE
State SWAC

encl: SWAC letter of October 31, 2001